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Please Reply To:

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May 9, 2006

**VIA PDF**

Stephen F. Mecham  
Callister Nebeker & McCullough  
Gateway Tower East Suite 900  
10 East South Temple  
Salt Lake City, UT 84133

Re: March 30, 2006 Desert Power, L.P. Force Majeure Letter

Dear Mr. Mecham:

We received your February 10, 2006 letter, supplementing the March 30, 2006 letter from Charles Darling to PacifiCorp, claiming that Desert Power, L.P. experienced an event of Force Majeure due to a delay in the issuance of the Facilities Impact Study from PacifiCorp Transmission and a delay due to metering equipment lead time. PacifiCorp intends to work closely with you and Desert Power to ensure that full interconnection is accomplished as soon as possible.

After researching the circumstances surrounding Desert Power's claim of Force Majeure and after having several discussions with Desert Power representatives, PacifiCorp hereby provides assurances to Desert Power that PacifiCorp will be ready to complete its scope for the back feed of the interconnection to Desert Power's Qualifying Facility project no later than June 1, 2006. However, after receiving Desert Power's draft schedule on May 5, 2006, it appears that Desert Power will not be able to meet an on-line date until October 3, 2006 and a "Temp" back feed date until August 18, 2006. Also, PacifiCorp's ability to complete its scope by June 1 is dependent on Desert Power completing certain construction milestones, and the ability to use US Magnesium's existing communication path. Use of US Magnesium's communications path will be required until PacifiCorp receives a Federal Communications Commission license for a permanent microwave path.

After reviewing Desert Power's draft schedule, it is apparent that Desert Power has failed to timely meet certain critical path milestones that would permit the facility to be on-line by June 1, 2006, or even to meet a back-feed date of June 1, 2006. For example, according to Desert Power's draft schedule, Desert Power is not even scheduled to order substation equipment until Thursday, May 11, 2006—three weeks before June 1, 2006. Such substantial delay by Desert Power in a critical path milestone will cause the entire schedule to be delayed significantly.

PacifiCorp is willing to help to accelerate Desert Power's schedule by searching our parts inventory to determine whether PacifiCorp can provide certain parts and supplies with long lead times more expeditiously.

As we try to understand Desert Power's delays, it appears that there are many delays that are completely unrelated to your alleged events of Force Majeure. In other words, even if your claims of Force Majeure were completely legitimate, Desert Power appears to have other sources and causes of delay. For example, Desert Power submitted its generation interconnection request on February 22, 2005—five months after PacifiCorp and Desert Power executed the Power Purchase Agreement on September 24, 2004. Moreover, as you know, Schedule 38 recommends “that the owner [Desert Power] initiate its request for interconnection as early in the planning process as possible, to ensure that necessary interconnection arrangements proceed in a timely manner *on a parallel track with negotiation of the power purchase agreement.*” (Service Schedule 38(II), emphasis added). Desert Power did not submit its request for interconnection until *five months after* the Power Purchase Agreement was executed. Further, the Public Service Commission of Utah issued an Order in June 2004 approving the pricing that would serve as the avoided costs for Desert Power's project. (Report and Order, Docket No. 03-035-14, June 28, 2004).

Additionally, Desert Power stated in its comments on the draft interconnection agreement—less than two weeks ago on April 26, 2006—that it now desires the ability to sell power on the open market. Desert Power's original interconnection request was as a Qualifying Facility (“QF”), referencing its Power Purchase Agreement with PacifiCorp. If Desert Power now intends to sell power on the open market, the interconnection is subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”) and Desert Power must meet the requirements of PacifiCorp's Open Access Transmission Tariff. To accommodate Desert Power's new position regarding its interconnection, PacifiCorp is willing to provide a FERC jurisdictional Large Generator Interconnection Agreement (“LGIA”) for your review after PacifiCorp confirms that all other requirements of the Open Access Transmission Tariff have been met, including a completed application as required under the OATT. This change in status, however, may lead to further delays in the interconnection and the eventual delivery of power to PacifiCorp. Alternatively, Desert Power may execute the interconnection agreement previously tendered by PacifiCorp, and request a FERC jurisdictional LGIA at some later date prior to Desert Power selling its generation, or any portion thereof, on the open market. As long as the generation output of the facility does not change, PacifiCorp can tender an LGIA for execution at that time without Desert Power having to enter the interconnection queue. Desert Power must make its election as to the type of interconnection as soon as possible to prevent further delay in the execution of the interconnection agreement.

Finally, in the March 30, 2006 letter you state that Desert Power deems “all dates in the PPA suspended until the event of Force Majeure is over . . . .” PacifiCorp rejects the suggestion that all dates in the Power Purchase Agreement are suspended. As you point out in your March 30<sup>th</sup> letter, Section 9.1 of the Power Purchase Agreement states that an event of Force Majeure is one that is “beyond the reasonable control of the Seller . . . despite the exercise of due diligence, [Seller] is unable to prevent or overcome.” Desert Power clearly had control over delaying its

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interconnection request for five months after executing the Power Purchase Agreement. Moreover, Desert Power had control over its delay of ordering critical path equipment. PacifiCorp considers all dates in the Power Purchase Agreement still in effect and commits to continue with the interconnection process as expeditiously as possible, subject to constraints in Desert Power's schedule.

Sincerely,

A handwritten signature in black ink, appearing to read "Dean S. Brockbank". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dean S. Brockbank  
Sr. Counsel

cc: Public Service Commission of Utah  
Artie Powell, Division of Public Utilities  
Andrea Coon, Division of Public Utilities  
Paul Clements  
Charles Darling